

**IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF MISSISSIPPI
OXFORD DIVISION**

**NATIONWIDE PROPERTY &
CASUALTY INSURANCE COMPANY**

PLAINTIFF

v.

CIVIL ACTION NO.: 3:19cv177-NBB-RP

THOMAS LP GAS COMPANY, INC.

DEFENDANT

COMPLAINT FOR PROPERTY DAMAGES

COMES NOW Plaintiff, Nationwide Property & Casualty Insurance Company, as subrogee of Dianne Cox, by and through undersigned counsel, and hereby brings this action against the Defendant, Thomas LP Gas Company, Inc., and alleges as follows:

THE PARTIES, JURISDICTION, AND VENUE

1. Plaintiff, Nationwide Property & Casualty Insurance Company, as subrogee of Dianne Cox (hereinafter "Nationwide"), is a property insurance company duly organized and existing under the laws of the State of Ohio with its principal place of business in Columbus, Ohio.

2. At all times material hereto, Nationwide was authorized to issue insurance policies in the State of Mississippi.

3. Defendant, Thomas LP Gas Company, Inc. (hereinafter "Thomas LP Gas"), is a Mississippi corporation with its principal place of business in Holly Springs, Mississippi.

4. Jurisdiction is proper in this Court pursuant to 28 U.S.C. § 1332 because there is diversity of citizenship between the parties and the amount in controversy exceeds the sum of \$75,000, exclusive of interest and costs.

5. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b) because Defendant, Thomas LP Gas, resides in this judicial district.

ALLEGATION OF FACTS

6. This action arises from an April 7, 2017, explosion and fire that destroyed the home of Dianne Cox (hereinafter “Cox”) in Byhalia, Mississippi.

7. At all times material to this Complaint, Nationwide insured the Cox home.

8. As required by its policy of insurance with Cox, Nationwide indemnified Cox for her damages arising from the explosion and fire in an amount not less \$1,328,233.10.

9. Pursuant to its contractually required indemnification of Cox, Nationwide is subrogated to all rights, claims, and causes of action of Cox against all persons responsible for the April 7, 2017, explosion and fire.

10. The explosion and fire was caused by liquefied petroleum (“LP”) gas leaking from a gas space heater installed in the fireplace at the Cox home.

11. The leaking LP gas was ignited by another appliance in the home, resulting in the explosion and fire.

12. The fireplace gas space heater was installed in the Cox home sometime in late 2010 or early 2011.

13. On or about December 27, 2012, Thomas LP Gas, took over responsibility for supplying LP gas to the Cox home.

14. Prior to activating LP gas service to the Cox home, Thomas LP Gas was required to inspect all gas appliances within the home and confirm that they were in safe operating condition.

15. Thomas LP Gas failed to confirm that the gas space heater installed in the fireplace was in a safe operating condition.

16. Specifically, Thomas LP Gas failed to confirm that the fireplace gas space heater had an automatic safety switch that would shut off the flow of gas if the pilot light was extinguished.

NEGLIGENCE

17. Thomas LP Gas owed to all foreseeable persons, including Cox, the duty to use reasonable care in its activities so as to avoid causing an unreasonable risk of injury to persons or properties.

18. Thomas LP Gas breached the duty it owed to Cox by:

- a) Failing to properly inspect the gas appliances within the Cox home prior to activating its liquid propane gas services;
- b) Failing to detect that the fireplace gas space heater did not have an automatic safety shutoff for the pilot light;
- c) Failing to detect that the fireplace LP Gas space heater was in an unsafe condition;
- d) Connecting its LP gas service to an unsafe appliance; and/or
- e) Other actual or omissions as discovery may reveal

19. As a direct, proximate and foreseeable result of Thomas LP Gas' breach of duty and negligence, Nationwide has been damaged in an amount not less than \$1,328,233.10.

NEGLIGENCE PER SE

20. Pursuant to the laws and regulations of the State of Mississippi, Thomas LP Gas was required to perform a safety inspection of all appliances in the Cox home before activating its LP gas service.

21. The laws and regulations of the State of Mississippi requiring a safety inspection of gas appliances before activating LP gas service are designed, at least in part, to protect homeowners such as Cox from injury to person or property by fire and explosion.

22. Thomas LP Gas acted in violation of the laws and regulations of the State of Mississippi by activating its LP gas service to the Cox home without conducting a proper safety inspection of the fireplace gas space heater.

23. Thomas LP Gas Company's failure to conduct a proper safety inspection of the fireplace gas space heater in the Cox home in violation of the laws and regulations of the State of Mississippi was a direct, proximate, and foreseeable cause of the April 7, 2017, fire, and constitutes negligence per se.

24. Thomas LP Gas Company's negligence per se caused damage to Nationwide in an amount not less than \$1,328,233.10.

WHEREFORE, Plaintiff, Nationwide Property & Casualty Insurance Company, prays:

A. That process issue and be served upon Defendant, Thomas LP Gas Company, Inc., compelling it to appear and answer this Complaint for Property Damages;

B. That Plaintiff, Nationwide Property & Casualty Insurance Company, have judgment in its favor and against Defendant, Thomas LP Gas Company, Inc., in an amount not less than \$1,328,233.10, plus all costs, expenses, and interest as allowed by law; and

C. That Plaintiff, Nationwide Property & Casualty Insurance Company, have all other relief allowed by law and equity.

Respectfully submitted this 14th day of August, 2019



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